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Federal Communications Commission  
Office of the Secretary

Christopher D. Imlay, Esq.  
Booth, Freret, Imlay & Tepper, P.C.  
7900 Wisconsin Ave.  
Suite 304  
Bethesda, MD 20814-3628

01-75

Re: Emergency Request for Waiver of Filing Fees  
for Certain Broadcast Auxiliary Modification  
Applications Submitted on FCC Form 601  
Fee Control No. 00000RROG-03-086

Dear Mr. Imlay:

This letter responds to your request (dated June 2, 2003) submitted by the Society of Broadcast Engineers, Incorporated (SBE) on behalf of its members, for a waiver of the "requirement of tendering filing fees with certain Part 74 Modification applications filed on FCC Form 601." Specifically, SBE requests a waiver of the application fees associated with Broadcast Auxiliary Service (BAS) licenses to provide information missing from the Commission's licensing database (i.e., the Universal Licensing System (ULS)) regarding that license, including missing receive site and azimuth database information. Although SBE states that filing fees would still be required for applications "to correct erroneous information, or to otherwise modify an existing . . . [BAS] license[.]" SBE somewhat inconsistently also requests "consideration" of a "limited-time" waiver of the fees associated with "modification applications which only correct erroneous data in the ULS for fixed Part 74 incumbent licenses."

On October 30, 2002, the Commission adopted prior coordination procedures for fixed point-to-point Aural Broadcast Auxiliary Service (BAS) stations above 944 MHz and fixed point-to-point Television BAS (TV BAS) stations above 2110 MHz under Part 74 of the Commission's rules.<sup>1</sup> The Commission adopted these procedures to conform procedures for fixed BAS and CARS stations under Part 78, with those already in effect

<sup>1</sup> See *Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules*, 17 FCC Rcd 22979, 23001-06 at paras. 53-65 and App. A: Final Rules at §§ 74.502(d) and 74.638 (2002) (*Report and Order*). The new procedures generally require parties to coordinate their planned spectrum use with potentially affected parties prior to filing a license application. The *Report and Order* also adopted the prior coordination requirement for fixed stations in the Cable Television Relay Service (CARS) under Part 78. See *Report and Order* at App. A: Final Rules at § 78.36.

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for Fixed Microwave Services (FS) under Part 101, section 101.103(d) of the Commission's rules. The Commission found that the FS procedures were appropriate for fixed BAS and CARS stations, stating that uniform procedures for bands shared among these services are necessary to promote spectrum efficiency and to minimize the possibility of harmful interference.<sup>2</sup>

On April 15, 2003, the Commission's Office of Engineering and Technology granted in part a Request for Temporary Stay filed by SBE to delay the effective date of the prior coordination procedures adopted in the *Report and Order* until October 16, 2003.<sup>3</sup> OET granted the temporary stay to allow BAS licensees time to provide and to correct BAS receive site information in the ULS database, so as to ensure that the new procedures effectively avert interference to existing systems.<sup>4</sup> In granting the stay, OET agreed with SBE that inaccuracies in the ULS could seriously affect the efficacy of prior coordination procedures, which was not anticipated by the Commission when it adopted these procedures in the *Report and Order*.<sup>5</sup>

In the instant waiver request, SBE states that the prior coordination procedures adopted in the *Report and Order* require a more accurate database than that needed under the informal coordination procedures currently in effect. SBE asserts that the new prior coordination procedures presume "valid and current" data in the ULS database which "is lacking for a substantial number of BAS records." SBE states that the information missing from and the inaccuracies in the ULS database are a legacy of previous licensing schemes. SBE maintains that it would be "unfair to subject" BAS licensees to an inaccurate and incomplete database when incumbent licensees have "provided all information required at all relevant times to keep their license information up to date, but simply weren't required to provide certain information now critical." SBE maintains that it would be "unfair" to new BAS applicants who complete the prior coordination procedures and application process only to find that existing receive sites that were not in the ULS database may suffer harmful interference from the new facilities.

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<sup>2</sup> See *Report and Order* at paras 2, 53, and 61. Because these procedures were already in effect for Aural and TV BAS stations in the bands 6425-6525 MHz and 17700-19700 MHz, the new rules only affect fixed BAS in the bands 944-952 MHz (950 MHz), 2450-2583.5 MHz (2.5 GHz), 6875-7125 MHz (7 GHz), and 12700-13250 MHz (13 GHz).

<sup>3</sup> *Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules, Order*, 18 FCC Rcd 7032 (OET 2003) (*Stay Order*). As originally adopted in the *Report and Order*, the Commission ordered the prior coordination rules to become effective 30 days after their publication in the Federal Register, which publication occurred on March 17, 2003. See 68 FR 12743 (Mar. 17, 2003).

<sup>4</sup> *Stay Order* at 7033.

<sup>5</sup> *Id.*

The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby. *See* 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990). Section 1.1117(b) of the Commission's rules expressly provides that the Commission will consider requests for waivers of filing fees "only . . . when received from applicants acting in respect to their own applications. Requests for waivers . . . of entire classes of services will not be considered." SBE, "the national association of broadcast engineers and technical communications professionals, with more than 5,000 members world wide,"<sup>6</sup> filed the instant request for waiver of the application fees "in the interests of its members nationally[.]" The Commission's waiver process is conducted on a case-by-case basis. Because SBE requests waiver of the application filing fees on behalf of its membership generally, and the Commission may only consider waiver requests filed by individual applicants pertaining to their own applications, we dismiss SBE's request for relief under section 1.1117(b).

Even assuming that SBE's request for waiver were not properly subject to dismissal under section 1.1117(b), SBE has failed to establish good cause for waiver of the application fees. We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of "extraordinary and compelling circumstances." *See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order*, 2 FCC Rcd 947, 958, para. 70 (1987); *Sirius Satellite Radio Inc.*, FCC 03-135, 2003 WL 21402609, para. 11 (released: June 19, 2003). The fact that the Commission adopted prior coordination procedures that will require a more accurate database is not in and of itself a sufficiently compelling justification for waiver of the application filing fees. Furthermore, SBE's assertion that it would be unfair to subject licensees and applicants for licenses to an inaccurate and incomplete database provides no grounds for waiver of the application filing fees. In this regard, we note that the *Stay Order*, as discussed above, has already largely addressed this concern by in effect providing licensees a six-month extension of time until October 16, 2003 to correct erroneous data in and to provide information missing from the ULS database. Moreover, SBE's request is unclear as to whether or not it seeks a waiver to correct erroneous data in the ULS database (as well as to provide information missing from the database) and, if so, to what extent. In these circumstances, we perceive no reason to grant a blanket fee waiver. We therefore find that you have neither demonstrated that the purported interests of SBE's members in not paying the application fees would be in the public interest nor otherwise established that the public interest would be served by a grant of your request. We accordingly deny SBE's request for waiver of the application filing fees.

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<sup>6</sup> *See* SBE Request for Temporary Stay of the PCN Requirement, Revision of the Broadcast Auxiliary Service, ET Docket No. 01-75, Digital Modulation for all TV BAS Bands, RM-9418, Low-Power Video Assist Devices, RM-9856 at 1 (dated Apr. 4, 2003).

Christopher D. Imlay, Esq.

4.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger". The signature is fluid and cursive, with a large initial "M" and "R".

 Mark A. Reger  
Chief Financial Officer